UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

ACORN SERVICES, INC.[1]

Employer

and Case 4–RC–19690

HOTEL EMPLOYEES & RESTAURANT
EMPLOYEES UNION LOCAL 274, AFL–CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a New Jersey corporation, is engaged in providing cafeteria and dining services at a number of institutions, including Cheyney University in Cheyney, Pennsylvania, (the facility involved herein). The Employer operates a cafeteria and snack bar at Cheyney and the Petitioner seeks to represent a unit of the Employer's full-time and regular part-time employees who work at those two locations. The Employer takes the position that the petition should be dismissed because it currently employs no unit employees. The Employer also contends that the unit is inappropriate because it includes regular part-time employees who do not share a community of interest with its full-time employees.

The Employer commenced operations at Cheyney in June 1997. According to Lafayette Caffie Jr., the Employer's Food Service Director, as of May 17, 1999, the date of the hearing, the Employer had no unit employees

[1] The Employer's name appears as amended at the hearing.

at Cheyney because all non-supervisory employees were laid off on May 16, 1999. The Employer hires its employees and maintains their employment in accordance with Cheyney's academic year, which encompasses the period from the second week in August through the second week of May of the following year. During the summer, the Employer services Cheyney on an as-needed basis for specific functions and events.[2] During the summer of 1998, the Employer used a "call-in" system and contacted full-time employees first, and part-time employees second, for work opportunities. The record shows that both groups were called to staff summer 1998 events.

In May 1998, the Employer's staff at Cheyney included 12 full-time employees. Seven of these employees returned to work for the Employer at Cheyney in September 1998, when it again had approximately 12 full-time positions available. There is conflicting testimony concerning the number of the Employer's part-time employees at Cheyney in May 1998. Caffie's testimony would support a finding that there were 8 or 13 such part-time employees. [3] The record shows that four of those part-time employees returned in September 1998 when there were 13 available part-time positions. In May 1999, the Employer employed 13 full-time employees, eight part-time employees and 19 students.[4] Caffie estimated that nine of the 13 full-time employees and one of the eight part-time employees would return in the fall of 1999.

In early April 1999, Caffie held a meeting with full-time and part-time cafeteria employees to advise them that they would be laid off as of May 17, 1999.[5] Operations Manager Shawn Turner conducted similar meeting with employees at the snack bar location. At the meeting with cafeteria employees conducted by Caffie, he informed the employees that they should be ready to work summer hours and be prepared to report any hours they worked to the unemployment compensation bureau. Caffie also told the full-time employees that they should be prepared to come back to work in the fall. The only evidence presented concerning the Employer's recall policy was Caffie's statement that recall is based on performance.

The full-time employees work 40 hours per week while part-time employees generally work between 15 and 20 hours per week.[6] Of the eight 1998 to 1999 academic year part-time employees[7] who were employed during the 1998 to 1999 academic year, at least four substituted for full-time employees on some occasions during the past academic year. Part-time employee Miles Doss filled a vacant full-time position for four to five weeks. According to Caffie, Martha Fowles has "been there a while."

Full-time and part-time employees wear the same uniforms and share common supervision. They punch time cards, have common pay periods and pay days, are under the same bonus plan, and are subject to the same breaktime, promotion, transfer, review, and overtime policies. The wage rates received by full-time employees range from $6.00 per hour to $9.75 per hour. Part-time employees' earn at least $6.00 per hour. Full-time employees are given eight paid holidays and receive paid vacations, sick days, and bereavement time. They are also

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[2] As of the date of the hearing, the Employer was scheduled to provide food services at one event sponsored by Cheyney, which would require the services of four full-time employees. There were no other plans to offer food services to summer students as enrollment was low. However if enrollment were to increase it was possible that food services would be offered The Employer did not offer food services last summer.

[3] The Employer's brief states that there were eight part-time employees at the time of the May 1998 layoffs.

[4] The Petitioner does not seek to include the students in the unit and the Employer agrees that they should be excluded.

[5] There was no written notification regarding the lay-offs. In 1998, employees who requested written notification for unemployment compensation purposes apparently received such letters. Caffie testified that the Employer prepared different letters for full-time employees than it prepared for part-time employees, but copies of their letters were not introduced into the record.

[6] The Petitioner introduced into evidence schedules that show that part-time employees Martha Fowles, Miles Doss and Rebecca Coleman each worked 40 hours for the week indicated on the schedules.

[7] Iris White, Khanus Alexander, Ross Jefferson, Martha Fowles, Miles Doss, Rebecca Coleman, Terry Nichols, and Damon Jackson.

eligible to participate in the Employer's health insurance and retirement plans, although only one full-time employee is currently enrolled in the Employer's health insurance plan and none are participating in the retirement plan.

The Board finds that regular seasonal employees are those employees who have a reasonable expectation of reemployment in the future. *L&B Cooling,,* 267 NLRB 1, 2–3 (1983*); Maine Apple Growers,* 254 NLRB 501, 502–503 (1984*)*. In assessing an employee's expectation of future employment for purposes of voting eligibility and unit placement, the Board considers the size of the labor force from which the seasonal employees are recruited, the stability of the Employer's labor requirements, the extent to which the Employer is dependent upon seasonal labor, the actual reemployment rate from season to season, and the Employer's preference or recall policy regarding reemployment of seasonal employees. See *Maine Apple Growers*, supra, 254 NLRB at 502-503; *L&B Cooling,* supra*,* 267 NLRB at 2–3; *Baumer Foods,* supra*.,* 190 NLRB 690 (1971*); Kelly Bros. Nurseries,* 140 NLRB 82, 85 (1962*)*. I find that the Employer's Cheyney operation is seasonal in that the Employer's regular operations occur from mid-August until mid-May of the following year, when all employees are laid off. The Employer provides some food services during the summer, on a sporadic basis and calls some employees to work as needed. There does not appear to be a formal recall policy, but the Employer's practice is to use its pool of previously employed full-time and part-time employees to fulfill its staffing needs for the following year. The Employer only looks elsewhere after this pool is exhausted.[8] The criterion utilized is performance, suggesting further that the Employer prefers to recall past employees. Thus, of the 13 full-time employees who were employed in May 1998, seven returned to work for the Employer in the fall of 1998, and at least some of the full-time employees were told in May 1999 to be prepared to return to work in the fall of 1999. Based on the foregoing, I find that the full-time employees at Cheyney are seasonal employees with a reasonable expectation of reemployment in the foreseeable future. *Kelly Bros. Nurseries,* supra, 140 NLRB at 85; *Case-Swayne Co.,* 209 NLRB 1069, 1070 (1974).[9]

With respect to the inclusion of part-time employees, the Board considers whether they perform unit work and do so with sufficient regularity as to have a community of interest with the unit. *Trump Taj Mahal Casino Resort,* 306 NLRB 294 (1992*),* enfd. 2 F.3d 35, 144 LRRM 2211 (3rd. Cir. 1993*); Tri-State Transportation,* 289 NLRB 356, 357 (1988*). Pat's Blue Ribbons,* 286 NLRB 918 (1987*); Mid-Jefferson County Hospital,* 259 NLRB 831 (1981). The part-time employees at Cheyney perform the same duties as the full-time employees, substitute for them and share common supervision. The full-time employees are given medical benefits and are eligible to participate in a retirement plan, but few employees exercise these options. Even if a larger number participated, the fact that part-time and full-time employees do not receive the same fringe benefits does not, by itself, support excluding them from a bargaining unit. *NLRB v. Western Temporary Services,* 821 F.2d 1258, 1268, 125 LRRM 2787 (1987*);* See *Quigley Indus.* 180 NLRB 486 (1969*); SCOA, Inc.,* 140 NLRB 1379, 1381 (1963*)*. Finally, the record shows that all the part-time employees work at least 15 hours per week and receive compensation similar to that of the full-time employees.[10] Accordingly, based on the above, I find the part-time employees share common working conditions with the full-time employees warranting their inclusion in the unit. *V.I.P Movers,* 232 NLRB 14 (1977*); L & A Investment Corp.,* 221 NLRB 1206*,* 1207 (1975*); Lancaster Welder Products*, 130 NLRB 1478 (1961*); Mensh Corp.,* 159 NLRB 156, 158 (1966*)*.

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[8] In *Baumer Foods*, the Board found that seasonal employees were included in the same bargaining unit as full-time employees in part because the employer gave preference in hiring to former seasonal employees and many returned each year. 190 NLRB at 690.

[9] Accordingly, the Employer's Motion to Dismiss the Petition on the ground that it currently employs no employees is denied.

[10] The Employer did not specifically contend that the part-time employees worked an insufficient number of hours to be included as regular part-time employees, nor was there any record evidence to support such a contention. Applying the *Davison-Paxson* eligibility criteria, an employee works with sufficient regularity if he or she works an average of four hours or more in the calendar quarter preceding the eligibility date. *Id.* 185 NLRB 21, 23–24 (1970). Given the seasonal nature of the employment in this case, however, a less stringent application of the *Davison-Paxson* eligibility criteria would need to be applied*.* See *SS Joachim & Anne Residence*, 314 NLRB 1191, 1193 fn.4 (1994); *NLRB v. Western Temporary Services*, supra, 821 F.2d at 1268–1270 (1987); *Modern Food Market*, 246 NLRB 884 (1979).

I further find that the Employer's part-time employees have reasonable expectation of reemployment. As discussed above, the Employer uses its pool of previously employed full-time and part-time employees to fill its staffing needs for the following academic year and, in September 1998, the Employer reemployed four of the eight or 13 part-time employees employed during the prior academic year.

Because the Employer's operation is seasonal, the election herein will be deferred until September 1999, after a representative complement of employees has been recalled and/or hired by the Employer. *Bogus Basin Recreation Assn.,* 212 NLRB 833 (1974).[11]

Based on the foregoing, I find that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **All full-time and regular part–time employees employed by the Employer at its Cheyney University operation in Cheyney, Pennsylvania, excluding students, guards and supervisors as defined in the Act.**

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,[12] subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the issuance of the Notice of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

> **HOTEL EMPLOYEES & RESTAURANT EMPLOYEES UNION**
> **LOCAL 274, AFL–CIO.**

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966);

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[11] The Petitioner need not produce a new showing of interest at the start of the next season. The Board's policy in cases involving seasonal industries is to require a showing of interest only among the employee employed in the unit at the time the petition is filed. *Bogus Basin Recreation Assn., s*upra, 212 NLRB at 834; *Camp & Felder Compress Co.,* 121 NLRB 871 (1958).

[12] Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

NLRB v. Wyman–Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that **within 7 days of the date of issuance of the Notice of Election by the Regional Director**, an election eligibility list, containing the ***full*** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer–generated lists should be printed in at least 12–point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before the required date. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by .

Dated June 18, 1999

at Philadelphia, PA

/s/ Daniel E. Halevy
DANIEL E. HALVEY
Acting Regional Director, Region Four

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